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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/382,150 01/31/95 VRZALIK

35M1/0716

CHARLES W HANOR
AKIN GUMP HAUER & FELD
1500 NATIONSBANK PLAZA
300 CONVENT STREET
SAN ANTONIO TX 78205

EXAMINER

PHAM, T

ART UNIT	PAPER NUMBER
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3508
DATE MAILED:

07/16/96

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☒ Responsive to communication filed on 4/29/96 ☒ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), 0 days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned, 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- ☐ Notice of References Cited by Examiner, PTO-892.
- ☐ Notice of Draftsman's Patent Drawing Review, PTO-948.
- ☐ Notice of Art Cited by Applicant, PTO-1449.
- ☐ Notice of Informal Patent Application, PTO-152.
- ☐ Information on How to Effect Drawing Changes, PTO-1474.
- ☐

Part II SUMMARY OF ACTION

1. ☒ Claims 1 are pending in the application.

Of the above, claims _____ are withdrawn from consideration.

2. ☐ Claims _____ have been cancelled.

3. ☐ Claims _____ are allowed.

4. ☒ Claims 1 are rejected.

5. ☐ Claims _____ are objected to.

6. ☐ Claims _____ are subject to restriction or election requirement.

7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. ☐ Formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).

10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).

12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.

13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

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EXAMINER'S ACTION

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Part III DETAILED ACTION

Drawings

1. In response to this Office action, Applicant is required to submit a proposed drawing correction including the objections raised in the prior office action mailed January 26, 1996. However, correction of the noted defects can be deferred until the application is allowed by the examiner.

Specification

2. The disclosure is again objected to because of the informalities raised in the prior office action in paragraphs 5-7. Correction is required

Claim Rejections - 35 USC § 102

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claim 1 is again rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,847,929 to Pupovic, U.S. Patent No. 4,858,260 to Failor et al. or U.S. Patent No. 4,862,529 to Peck.

Pupovic '929 discloses a bed comprising a frame including a mattress support having at least a first articulatable leg region (13), a second articulatable seat region (11) and a third articulatable head region (7); a raise-and-lower mechanism (2, 3) for generally raising and

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lowering the entire mattress support relative to a floor engaging portion (1) of the frame; an articulation mechanism (9, 15) for articulating the patient surface from a horizontal, lying position to a seated position; and controls (9, 17) for tilting the mattress support (see Figure 7).

Failor et al. '260 discloses bed including a trendelenburg mechanism comprising a frame including a mattress support (18, 20, 22), an articulation mechanism (114), a raise-and-lower mechanism (not shown) positioned within a polymeric casing (30), and controls (102) for tilting the mattress support.

Peck '529 discloses a bed comprising a frame (15) frame including a mattress support (30, 31, 33, 35, 37), an articulation mechanism (90), a raise-and-lower mechanism (19, 20), and controls (22) for tilting the mattress support.

Response to Amendment

5. Applicant's arguments filed April 29, 1996 have been fully considered but they are not deemed to be persuasive.

In response to Applicant's argument that claim 1 emphasizes the invention's character as a bariatric bed, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

Applicant's invention is intended to be used to support patients having weights in the range of 500 to 800 pounds. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed

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apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

The beds of the prior art references are seen as inherently having the ability to support a patient having weights in the range of 500 to 800 pounds, even if the beds may not be able to support the patient for a long period of time before they may break.

In response to Applicant's argument that the prior art references do not anticipate the claimed invention, it has been held that a claim is anticipated if each element of the claim is found, either expressly described or under principles of inherency, in a single prior art reference, or that the claimed invention was previously known or embodied in a single prior art device or practice. *Kalman v. Kimberly-Clark Corp.*, 218 USPQ 789. Since each element of the claim is found in each of the prior art references, the claim is anticipated by Pupovic '929, Failor et al. '260 and Peck '529.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teri Pham whose telephone number is (703) 305-7421.



STEVEN N. MEYERS
SUPERVISORY PATENT EXAMINER
GROUP 3500

Teri Pham
July 8, 1996